

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Original filed 5/1/77

77-1302

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 77-1302

UNITED STATES OF AMERICA,

Appellee,

- against -

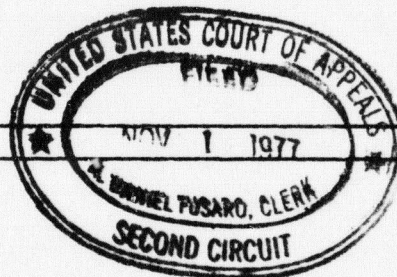
KIVA MILLER,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX



DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

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1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 -----X

5 UNITED STATES OF AMERICA :

6 -against- :

75 CR 106

7 KIVA MILLER, :

8 Defendant. :

9 -----X

10
11 United States Courthouse
12 Brooklyn, New York

13 July 1, 1977
14 2:00 o'clock P.M.

15 B E F O R E :

16 HONORABLE THOMAS C. PLATT, U.S.D.J.
17
18
19
20
21
22
23

24 PERRY AUERBACH
25 ACTING OFFICIAL COURT REPORTER

Appearances:

2

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: PAUL CORCORAN, ESQ.
Assistant U.S. Attorney

LEGAL AID SOCIETY
Attorney for the Defendant

BY: CHRIS TERMINI, ESQ.

1 THE COURT: How do you wish to proceed here?

2 MR. CORCORAN: I think your Honor should act
3 upon the plea to the disorderly conduct charge which
4 Mr. Miller doesn't dispute, since this is a basis
5 for revoking probation.

6 THE COURT: Well, he does dispute it. He says
7 that there was no violation of law.

8 MR. CORCORAN: He doesn't dispute the fact
9 that he pled guilty to disorderly conduct, and on
10 that basis he certainly violated probation. If
11 your Honor wishes to have a hearing on the fact,
12 we have the police officers here who did make the
13 arrest on the underlying offense.

14 THE COURT: Well, you see the problem is that,
15 as I understand it, you correct me if I'm wrong,
16 Mr. Termini, he says that the Condition Number One
17 says you shall refrain from any violation of law,
18 Federal, State or local. He says if that sentence
19 were there alone, it might be one thing, but it
20 goes to the next sentence, it says you shall get
21 in touch immediately with your probation officer
22 if arrested or questioned by a law enforcement
23 officer, and he says that sentence imports a crime
24 into the first sentence, not just to disorderly
25 conduct or a traffic offense. I'm not sure I

1 follow that reasoning. You stopped for a traffic
2 offense, you were questioned by a law enforcement
3 officer, then you may not be arrested, and according
4 to that language, questioned by a law enforcement
5 officer can be read, but that's Mr. Termini's
6 position, and he says that this is not a crime.

7 MR. TERMINI: Well, if I just might follow
8 through, your Honor. I think that Mr. Miller and
9 I had reached a position that we might be, in fact,
10 very willing to enter a plea to a violation of
11 probation, and that the only problem that had
12 stemmed, despite my putting in the motion papers,
13 etc., on this was that what I saw was a statement
14 of fact as presented to your Honor, apparently is
15 written up as a burglary or breaking and entering
16 into the warehouse. That's what I'm led to believe.

17 THE COURT: No. It said no breaking and
18 entering. It said removing cartons of merchandise
19 from a warehouse gutted by fire.

20 MR. TERMINI: Yes. Well, from a warehouse,
21 to me implies -- can imply to me that the person
22 entered into the warehouse itself.

23 THE COURT: I don't know if it says breaking
24 and entering. It may have been entering, but not
25 breaking.

1 MR. TERMINI: In fact, there was no entering
2 into the premises of the warehouse. The merchandise
3 was outside the warehouse, which had been gutted
4 for a period of time, and some of the merchandise
5 was, in fact, waterlogged, and there were certain
6 people in fact that were removing property in and
7 out and everything else from the warehouse. That is
8 my only point that I feel that is a probable
9 interpretation that your Honor might be considering
10 a burglary, is the fact that this underlying
11 information lead to the plea to disorderly conduct.

12 MR. CORCORAN: If Mr. Termini's going to
13 dispute the facts, I suppose we should go forward.
14 The police officer observed Mr. Miller coming out
15 of the warehouse on two occasions, carrying cartons.
16 It was not a question of these cartons being outside
17 the warehouse.

18 MR. TERMINI: No, I'm not saying they were
19 adjoined, the warehouse, but they weren't physically
20 inside the warehouse.

21 THE COURT: I think that's a dispute.

22 MR. TERMINI: That would be an important
23 aspect for your Honor to take into consideration.
24 If your Honor says to me the fact that they might
25 have been just outside the warehouse itself or just

1 inside the warehouse, plays no important decision
2 on what your Honor might do, and I don't know what
3 your Honor's going to do. Then, I think there's
4 no problem --

5 THE COURT: I think unfortunately the
6 facts surrounding the alleged offense, and the
7 circumstances involved by the -- for example, let's
8 take an extreme case, where the warehouse was
9 intact, the warehouse was fully locked and fully
10 burglar alarmed, and the goods, merchandise was
11 about to be shipped in which hundreds of thousands
12 of dollars was involved, and the proof was that
13 the people involved in this had gone in and
14 jumped the alarms, broken and entered and were
15 stealing valuable stuff. There would be little
16 doubt in my mind that this was a clear violation.
17 The way you keep trying to describe it to Mr.
18 Termini, there is a case where a guy was picking
19 up some litter off the street and clearing the
20 streets of New York --

21 MR. TERMINI: No, I had no intention, I'm
22 sorry if I conveyed that emotion. I really am.
23 All I'm trying to say is nobody broke down the
24 door to get into this place.

25 THE COURT: Maybe we ought to hear what the

1 police officer says, if he was there. Maybe that's
2 the best way to handle it.

3 MR. CORCORAN: Your Honor wishes, as I said
4 it goes to the underlying offense, disorderly
5 conduct is grounds -- however, we are willing to
6 proceed with the underlying facts unless Mr. Termini
7 wishes to stipulate. I can tell you at this point
8 what the Government's evidence will be, and that
9 is that on or about January 7th, 1977 a fire
10 occurred largely destroying a complex of warehouses
11 on West 30th Street, one of the warehouses, one of
12 the seven buildings was 662 West 30th Street was no
13 so destroyed. However, the windows were broken
14 during the course of the activities by the Fire
15 Department. The warehouse contained -- it was a
16 public warehouse. It contained materials being
17 stored by a corporation running the warehouse for
18 other people. It was the Raleigh Warehouse
19 Corporation that was running the warehouse. The
20 materials that were in the burned out premises were
21 in their charge at the time.

22 On January 23rd at about 5:30 in the
23 evening, that's a Sunday evening, Nassau County
24 Police Officer Gilbert Sullivan was in the area
25 taking some photographs. He was off duty at the

1 time, and he observed a van pull up to the premises
2 662 West 20th Street. First he thought nothing of
3 it. He thought perhaps the owner was removing some
4 materials.

5 However, later he observed the same people
6 taking a second truck load out, and he noticed that
7 they were carrying flashlights and acting in a
8 rather surreptitious manner.

9 When he approached the van he observed
10 three individuals in the van, one of whom was
11 Kiva Miller, who was driving the van.

12 The officer approached with his badge out
13 and his gun visible. He identified himself, and
14 at that point Mr. Miller sped off in the van.

15 The van was subsequently found a few blocks
16 away, and it included a number of cartons of toys,
17 which the officer had observed the individuals
18 taking from the warehouse.

19 Subsequently, in a search of the neighborhood,
20 Mr. Miller was observed running from premises on
21 28th Street. He was stopped, taken back to the
22 premises, the other two people had been involved
23 in the looting of the warehouse were discovered
24 at that premises, additional cartons of toys were
25 found on the premises, a total of twenty six cartons

1 were found.

2 Mr. Miller at that time asked the officer
3 and the New York City police officer who was
4 accompanying the off-duty Nassau County officer
5 if he might just return the materials and avoid
6 the problem that he created, and they indicated
7 that was not possible.

8 He was then taken to the police station
9 where he was arrested and booked for grand larceny,
10 possession of -- criminal possession of stolen
11 property.

12 Subsequently a burglary charge was lodged
13 against him. Thereafter, Mr. Miller was permitted
14 to plead to disorderly conduct and was fined
15 a hundred dollars. That's essentially what the
16 Government's evidence would be.

17 THE COURT: His request was, would you be
18 willing to stipulate to that?

19 MR. TERMINI: I have to admit I'm not
20 excited about all aspects of that testimony.

21 THE COURT: What?

22 MR. TERMINI: I'm not exactly excited about
23 all the aspects of that testimony.

24 THE COURT: He said he would produce the
25 officer then you can cross examine him if you want.

1 Okay, we'll hold a hearing.

2 MR. TERMINI: Before we start, your Honor,
3 there might be potential witnesses for the defense
4 side, so I think it would be better if all
5 potential witnesses were seated outside. I don't
6 know how many will eventually be called.

7 THE COURT: All right.

8 MR. CORCORAN: I have no objection. The
9 Government calls Gilbert Sullivan.

10 THE COURT: All other witnesses please wait
11 outside.

12 MR. CORCORAN: Mr. Finkelstein, Officer
13 Grant, please wait outside.

14 G I L B E R T S U L L I V A N, having first been duly
15 sworn by a clerk of this Court, was examined
16 and testified as follows:

17 THE CLERK: State your name for the record
18 and please spell it.

19 THE WITNESS: Gilbert Sullivan, G-I-L-B-E-R-T,
20 S-U-L-L-I-V-A-N.

21 DIRECT EXAMINATION.

22 BY MR. CORCORAN:

23 Q Officer Sullivan, you are employed by the
24 Nassau County Police Department; is that correct?

25 A Yes.

1
2 Q And how long have you been with the Nassau
3 County Police Department?

4 A Six years as a police officer.

5 Q Calling your attention to January 23rd of
6 this year at about 5:30 in the evening, where were you at
7 that time?

8 A I was over there by the building. It was
9 West -- it should be West 30th Street by the West Side
10 Highway.

11 Q And what were you doing at the time?

12 A I was taking photos.

13 Q Of what, sir?

14 A There was a burned out building there, and
15 I was taking photos of the ice that had accumulated on
16 the building.

17 Q Is photography your hobby?

18 A Yes, sir.

19 Q Can you tell us what, if anything, you
20 observed while you were in the premises of 662 West 20th
21 Street that evening?

22 A When I first got there I had noticed a
23 van, and I noticed some activity going on , boxes being
24 moved back and forth to the van.

25 Q Back and forth from where, sir?

1
2 A From the building.

3 Q When you say, "back and forth," what was
4 being moved from where?

5 A There was a building on the corner of 30th
6 Street and the West Side Highway, and the name of the
7 building was the Stanely Soap Company. As it was, I was
8 taking pictures. I observed three subjects taking boxes
9 out and putting them in the van.

10 Q Where were they obtaining the boxes?

11 A They were obtaining them from inside the
12 building.

13 Q Did you see those three individuals actually
14 entering the building itself?

15 A Yes, I did.

16 Q And remove the boxes from the building?

17 A Yes.

18 Q How long did this go on?

19 A They were actually moving the boxes. They
20 had loaded the boxes to the van. They left the scene.
21 They came back again and removed some more boxes and left
22 the scene a third time, and it was at that time that it
23 came to my attention that they were looking out of the
24 doors of the building. There were other people around
25 taking photos. It seemed they were more suspicious with

the activities occurring outside of the building.

Q Were you on duty at that time?

A No, I wasn't.

Q Off duty?

A Yes.

Q You said there was activity, they were doing something as they were coming in and out. Could you describe exactly what was occurring as they came out of that building?

A Well, they were looking outside of the door. They had flashlights in their hands, and they were peering out, and there were other people taking photos of the ruins of the fire, the fire buildings, and you know, it lead me to believe that there was a crime being committed. No longer a -- at first I had thought that they had possibly worked for the owner of the building in removing stuff that may have been damaged or something, but then their suspiciousness made me believe that there was a crime being committed.

Q Where was this building located from the burned out building that you were photographing?

A It was right next door.

Q Adjacent?

A Yes.

1
2 Q After you observed these three individuals
3 with flashlights removing cartons, what, if anything, did
4 you do yourself?

5 A I was accompanied by a friend of mine,
6 also there taking pictures. I advised my friend to go
7 around the block, I believe it was 29th Street, and get
8 a police car parked on that street -- we had noticed it
9 earlier -- at which time I observed that the subjects
10 were getting in the van and they were going to leave the
11 locations. Then I then took my shield out and had my
12 gun to my side, and I attempted to identify myself as
13 a police officer.

14 Q What exactly did you do at that point?

15 A Driver of the van, Mr. Kiva, he observed
16 me in the rearview mirror of the van. He took off, he
17 left the scene.

18 MR. TERMINI: I object to that last part,
19 Judge. I object to that last part of what he said
20 about my client observing someone in a rearview
21 mirror. I don't think that's a physical
22 impossibility.

23 THE WITNESS: He also turned away.

24 THE COURT: Wait a minute, it's not wholly
25 beyond the realm of it. Did you see him in the

rearview mirror?

THE WITNESS: Yes, I did.

THE COURT: You made eye contact with him?

THE WITNESS: Yes.

THE COURT: How did he know you were a policeman at that juncture?

THE WITNESS: Well, he also bent his head and looked around.

THE COURT: Did you have your badge out?

THE WITNESS: Yes, I did.

THE COURT: In your hand?

THE WITNESS: Yes, I did.

THE COURT: How far away from him were you?

THE WITNESS: I wasn't more than three feet away from the driver's door of the van.

THE COURT: Motion is denied.

DIRECT EXAMINATION

BY MR. CORCORAN: (Continued)

Q Did you, in fact, say anything at the time you approached the van?

A Yes, I did. I said I was a police officer.

Q And to whom did you make that statement?

A To the driver of the van.

Q Would you look around the courtroom and see

1
2 that individual here today?

3 A The subject right there (indicating).

4 MR. CORCORAN: Indicating Mr. Miller, your
5 Honor.

6 Q What, if anything, did Mr. Miller do then
7 after you identified yourself as a police officer?

8 A I made contact with myself, and they took and
9 they fled. They left. They drove off. They made a U turn
10 and went southbound on the West Side Highway.

11 Q What did you, yourself, do at this point,
12 Officer Sullivan?

13 A I told my friend prior to this occurrence
14 to get the radio car. I looked down the block, and I
15 observed that my friend was just coming out of the block
16 with his own private auto. He took and followed the van,
17 the New York City police car stopped on the corner, I
18 ran down the block and advised the police officers of the
19 occurrence at this time, I identified my friend's car.

20 Q Was it still light out at that time?

21 A Yes.

22 Q Where did you next go on that premises?

23 A Southbound on the West Side Highway to
24 28th Street, went east on 28th Street to 9th Avenue, went
25 north on 9th Avenue -- let me just -- (pause.) We went

1
2 east on 28th Street to 9th Avenue where we found the van.

3 Q The van you had observed at the premises,
4 662 West 30th Street?

5 A Yes.

6 Q Was anyone in the van when you located it?

7 A No, it was abandoned.

8 Q What did you do at this point?

9 A At that point we attempted to locate the
10 subjects.

11 THE COURT: Was there anything in the van at
12 that point?

13 THE WITNESS: Yes, there was, your Honor.
14 There were large boxes in the van of the same type
15 that I had observed being taken from the building.

16 THE COURT: About how many?

17 THE WITNESS: At least ten boxes.

18 THE COURT: And then what did you say? You
19 attempted to locate the subjects?

20 THE WITNESS: Yes, "New York City police
21 officers." There was a taxistand --sort of a
22 taxi building. We entered that and talked with
23 one of the people in the building and he said he
24 had not seen anybody, but we had authorization
25 to search the building. We searched the

1
2 building. We can out. Then one of the New York City
3 officers, Officer Grant, went to a pizza parlor that was
4 located on the corner, and then he attempted to question
5 one of the proprietors, and had asked him if he had
6 seen anybody leave the area of the van, and he stated
7 "No."

8 Q Did there come a time when you saw the
9 individual you identified as the driver of this van there-
10 after?

11 A Yes, I did.

12 Q When did you next see that individual and
13 where?

14 A Well, during the course of the investigation.

15 Q We are talking about the same evening?

16 A Yes, during the course of the investigation
17 it was a matter of the New York City officers not being
18 sure whether or not they were in one of the buildings.
19 There were three buildings on that corner. There was the
20 taxi building, pizza parlor, a tenement building, and
21 there was a small like warehouse complex alongside of the
22 tenement building.

23 Q Would this be on 23th Street just off of
24 9th Avenue?

25 A Yes, it would be. so the New York City

1
2 officers said that they would request their Anti-Crime Unit
3 to stake out that location. At this time, figuring the
4 New York City police officers would take over the
5 investigation, I left to go home. As I got into my car
6 I observed the Defendant leaving the building.

7 Q Which building?

8 A The warehouse right next door to the
9 tenement building, and he was heading west.

10 Q When you say, "heading," what exactly was
11 he doing when you observed him?

12 A He was moving at a fast pace, you know,
13 fast walk to a run.

14 Q And in what direction?

15 A He was heading west on 28th Street.

16 Q Did you have occasion to speak to that
17 individual some time shortly thereafter?

18 A Yes, I did.

19 Q Was he, in fact, stopped by the New York
20 City Police?

21 A Yes, he was.

22 Q And where did you have a conversation with
23 him?

24 A We had a conversation just down the block,
25 it was about mid point in the block.

1
2 Q And what, if anything, did he say?

3 A He stated that, you know, I had identified
4 him as being the driver of the van, and I asked him, you
5 know, what did he do with the other proceeds, and he said
6 that he didn't want to say anything at first, and we
7 also asked him where his friends were, and he said, "Back
8 in the building at the end of the street." So the New
9 York City officer and myself went back to that location
10 and knocked on the door and identified himself to his
11 friends. They opened the door up, and subsequently we
12 entered the building, and we observed more boxes from the
13 building that I had first seen.

14 Q Approximately how many additional cartons did
15 you observe in that premises?

16 A About eighteen more boxes.

17 Q Did Mr. Miller say anything at that time?

18 A During the course of conversation it did
19 occur, he stated that, you know, he thought he didn't do
20 anything wrong, and that the officer explained to him that
21 it was a matter of not getting permission from the owner
22 to take such merchandise and property, and Mr. Kiva --
23 Mr. Miller asked if it would be okay that he get ahold of
24 the owner of the building and possibly return it, and the
25 New York City officer replied he didn't like it. There was

an investigation and subsequently arrested him.

Q Prior to that time, had Mr. Miller been placed under arrest?

A I don't believe so. There was an investigation, New York City officers attempted to ascertain whether or not he was involved.

MR. CORCORAN: Thank you. I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. TERMINI:

Q Officer Sullivan, did you make any personal notes concerning this?

A Not really, no, sir.

Q Did you tell another officer about your observations? Did you have occasion to tell another officer concerning what you saw?

A Yes, I did.

Q Did you tell, in fact, Officer Grant?

A Yes.

Q About what you did see; is that correct?

A Yes.

Q And what you told him is what you say; is that correct?

A Yes.

1
2 Q Now, what is the building where you saw the
3 van and Mr. Miller and the two other people?

4 A What was the name of the people?

5 Q What's the address?

6 A As far as I knew, the address was 30th Street
7 and the West Side Highway on the corner.

8 Q What was the condition of that building?

9 A Well, the building has two dimensions?

10 Q No. The physical appearance of it.

11 A It was still structurally sound. It was a
12 matter of the -- some of the windows on the east side of
13 the building were broken, apparently due to firemen from
14 the operations of fire fighting, but the building was
15 sound and it seemed --

16 Q Was this building secured?

17 A As to what? The doors being locked?

18 Q Yes.

19 A No, the doors were open.

20 Q The door were open?

21 A Yes, sir. I don't know whether or not they
22 opened the doors.

23 Q The doors were opened though; is that
24 correct?

25 A Yes.

1
2 Q Were there any guards on the premises?

3 A No.

4 Q It's your testimony there were windows
5 broken also?

6 A The windows were broken on the upper floors.

7 Q Did you see any activity in this building?

8 A Yes, I did.

9 Q Other than what you testified to, did you
10 see any other activity in this building?

11 A No, I just seen three subjects coming out
12 of the --

13 Q Did you see anybody on the street in this
14 area at this time?

15 A Adjacent to the people taking pictures?

16 Q Were there other individuals taking various
17 items from this area at this time?

18 A I did not see anybody else taking items at
19 that time.

20 Q You stated that you saw Mr. Miller and two
21 other people; is that correct?

22 A Yes, sir.

23 Q It's your testimony that you actually saw
24 them inside this building?

25 A Yes, I did.

1
2 Q Did you tell Officer Grant that you saw them
3 inside this building?

4 A Yes, I did.

5 Q And I believe you stated that this van was
6 there on three different occasions?

7 A Yes, it was.

8 Q How long a period of time was this?

9 A I'd say I was there possibly a half an hour.

10 Q It's your testimony that when you approached
11 Mr. Miller you showed him the badge?

12 A Yes, I did.

13 Q And you stated that you were --

14 A A police officer.

15 Q A police officer?

16 A Yes.

17 Q Was there any response to that?

18 A He turned his head, looked in the mirror
19 and he drove off. He made a U turn and he left.

20 Q Were you with anybody at this point in
21 time?

22 A No, I wasn't. I was by myself.

23 Q And how close did you say you got to him?

24 A Approximately three feet from the driver's
25 door of the van.

Q And where were the other people?

A They were inside the van.

Q Were they seated next to Mr. Miller?

A I don't recall.

Q You followed this van; is that correct?

A My friend followed the van.

Q And you found it a few blocks away?

A Yes.

Q Did you have a conversation with Officer Grant concerning the arrest of Mr. Miller?

A At the time I first seen the radio car?

Q Yes.

A I explained to them what I observed, and at that point we also saw my friend's car following the van, and they also took and pursued the vehicle.

Q There came a time when you apprehended Mr. Miller or Officer Grant -- somebody apprehended him?

A Yes.

Q Did you have a conversation with Mr. Miller?

A The only conversation I had with him was I had seen him in the building, and it was a matter of whether or not they were going to be arrested or not for the possible crime that they had committed.

Q Did you have a conversation with Officer Grant

concerning this?

A Yes.

Q What did he tell you about it?

A He also stated that it would be a matter of getting ahold of the owner of the building and seeing, you know, what the story was as to what the owner was doing with the material in the building, whether or not he would press charges.

Q Did you have occasion to examine any of the cartons involved in this case?

A As to what? Opening them?

Q No. Did you examine any of the cartons?

A We just, you know, looked at the boxes.

Q Were any of them waterlogged?

A No, they weren't. They were all dry.

Q All dry?

A Yes.

Q Anything on these cartons?

A I don't recall the writing that was on the boxes.

Q What was the adjoining area like to this building? Was there other evidence of fire?

A Oh, yeah. There was quite a large pile of debris and burnt out buildings and what not. It had

1
2 been a large fire, yes.

3 Q And it's still your testimony that there
4 was no other activity in this area?

5 A The only activity that occurred were people
6 taking pictures of the ruins. I saw no other activity
7 involving the building itself.

8 MR. TERMINI: I have no further questions.

9 MR. CORCORAN: May I ask one more?

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MR. CORCORAN:

13 Q Officer Sullivan, can you tell us what was
14 contained in the cartons that you observed Mr. Miller
15 taking from the warehouse?

16 A Apparently toys.

17 Q Did you, yourself, see what was in the
18 cartons?

19 A Apparently dolls.

20 MR. CORCORAN: Thank you. I have no further
21 questions.

22 THE COURT: Did the van have any insignia?

23 THE WITNESS: No, there was no markings on
24 it, your Honor.

25 THE COURT: All right. Do you know who the

van belonged to?

THE WITNESS: No, I don't. It's just a matter of the occupants of the van.

THE COURT: Okay. You may step down.

(Whereupon, the witness was excused.)

MR. CORCORAN: I call Mr. Finkelstein.

DAVID FINKELSTEIN, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name for the record and please spell it.

THE WITNESS: David Finkelstein, D-A-V-I-D, F-I-N-K-E-L-S-T-E-I-N.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Finkelstein, what do you do for a living?

A I'm runner of a warehouse.

Q Were you associated with the Raleigh Warehouse Corporation?

A Yes.

Q In January of this year?

A Yes.

Q And did you, in fact, run a public warehouse

on West 30th Street in Manhattan?

A Yes.

Q Could you describe those premises?

A It was a complex of seven adjoining buildings with various heights and sizes.

Q And what did you store in those buildings?

A Various commodities.

Q Toys, stored in any of those buildings?

A Yes.

Q What if anything happened on or about January 7th of this year, 1977?

A There was a very big fire.

Q And what resulted from the fire?

A Six of the buildings were destroyed and damaged by fire, and subsequently knocked down; one remained.

Q And was that the remaining building, the building at 662 West 30th Street?

A Yes.

Q What specifically were you using that building for in January of '77?

A Well, we were still storing various parts of merchandise then, although we weren't putting anything in, but the merchandise remained in there.

1
2 Q Did you retain control of the premises?

3 A Yes.

4 Q And were you at that time responsible for
5 all the goods contained in the premises at 662 West 30th
6 Street?

7 A Yes.

8 Q Calling your attention to January 23rd of
9 this year, thereabouts, did you authorize an individual
10 by the name of Kiva Miller to remove any materials from
11 that premises?

12 A Absolutely not.

13 Q Mr. Finkelstein, I ask you to look at the
14 individual seated at the table here with the beard,
15 defense table; have you ever seen that individual before?

16 A I don't think so.

17 Q Did you ever authorize that individual,
18 Mr. Kiva Miller to take anything from the premises, 662
19 West 30th Street?

20 A Definitely not.

21 Q Did you suffer any losses, during that
22 month, besides the loss you suffered as a result of the
23 fire; any looting of your premises?

24 A Yes, a great deal of looting.

25 Q Lose much material to looting?

1
2 A Yes.

3 MR. CORCORAN: Thank you. I have no further
4 questions of this witness.

5 CROSS EXAMINATION

6 BY MR. TERMINI:

7 Q Mr. Finkelstein, do you know what the physical
8 appearance of the building in question at 662 --

9 A Absolutely.

10 Q (Continuing) was on January 23rd?

11 A Yes.

12 Q What was the physical condition of that
13 building?

14 A The windows on the upper floors, most of
15 the windows were knocked out by the firemen, they were
16 open. We subsequently closed up most of the fire escape
17 windows and it was broken into again; on and off the
18 windows were broken.

19 Q Anything else about the condition of this
20 building?

21 A Well, it was very seedy looking because of
22 all the looting that was going on. .

23 Q Was there looting of this building from
24 January 6th to January 23rd?

25 A January 6th, absolutely not.

1
2 Q I mean after the fire?

3 A Yes.

4 Q From after the fire on January 7th or 8th
5 or whatever, until January 23rd, was there looting in this
6 building?

7 A Yes.

8 Q And what conditions --

9 A Other than -- excuse me -- other than the
10 January -- say 7th, 8th and 9th?

11 Q Yes.

12 A There was a great many policemen and reporters
13 and t.v. cameramen there, and so on.

14 Q After the 9th until January 23rd was there
15 a great deal of looting?

16 A Yes.

17 Q With respect to this building, was there
18 looting with respect to other buildings adjoining it?

19 A Well, the other buildings were gutted by
20 fire, and there wasn't too much left to loot as far as
21 anything.

22 Q But is it fair to say that anything left
23 in there was taken also?

24 A Wasn't much left. The fire was burning for
25 about six weeks.

Q And what stpes did you take from January

1
2 9th to secure this building, 662 West 30th?

3 A When the looting began, one -- no one was
4 allowed to enter that building without authorization, both
5 from me and from the captain of the police station, the
6 local police station. They had to show, even employees
7 of mine, for them to enter the building had to contact
8 the police station, an officer would meet them there, and
9 they would show them the letter and they would be allowed
10 into the building; even though they were employees.

11 Q In other words, there was supposed to be
12 an officer in this area?

13 A If I wanted to enter that building I would
14 call up the police station, and either the captain if he
15 was in, if not the lieutenant or someone would send
16 somebody over there, we would present a letter, an agreed
17 upon letter between the captain of the local precinct
18 and myself.

19 Q Was anything done physically to the building,
20 itself?

21 A Boarded up several times.

22 Q Do you know what the condition was with
23 respect to the boarding up of this building on January
24 23rd?

25 A I certainly couldn't remember that.

MR. TERMINI: No further questions.

THE COURT: When was the last time before the 23rd that you were at the premises; do you know?

THE WITNESS: I would say I was at that building every day from January 7th through March.

THE COURT: Well, the 23rd was a Sunday, I believe.

THE WITNESS: That was nothing, I was there everyday, several times a day; Saturdays and Sundays.

THE COURT: Did you recall, do you have a specific recollection of the 23rd, whether the building, whether or not all the doors were locked and boarded up?

THE WITNESS: I certainly don't have any recollection on that particular date.

REDIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Finkelstein, you the upper windows were broken; is that correct?

A Yes.

Q And the lower windows were not. Were they boarded?

A On the first floor, I don't think there are any windows as such where you, you know, just glass type

1
2 windows. Those windows, if there were any, were much
3 smaller of this size and were screened, etc.

4 Q Were the doors to #662 West 30th Street intact
5 after the fire and on January 23rd?

6 A Other than they were intact in the sense that
7 they were pried open by the Fire Department, but then we
8 just had to put a lock on.

9 Q And were they, in fact, locked during that
10 period from January 7th to March when you visited on a
11 daily basis?

12 A On and off there were many times, as I said
13 there looters who broke in the place, and some of them would
14 open the doors.

15 Q If you found the building in that condition,
16 that is, unlocked, would you replace the locks?

17 A Yes. The police would be on my back constantly;
18 at home, work.

19 Q And you had goods in that particular premises,
20 for which you were still responsible; is that correct?

21 A Yes.

22 Q Were the goods in that premises, 662 West
23 20th Street, affected by the fire? Were they waterlogged?

24 A No. A little bit from rain, from the windows
25 that I mentioned. Goods that were near the windows were a

1
2 little bit wet from rain but there was no water that
3 poured into that building.

4 Q Were the bulk of the goods in that premises
5 fully intact?

6 A Yes.

7 MR. CORCORAN: Thank you. No further questions.

8 MR. TERMINI: No further questions.

9 THE COURT: All right, you may step down,
10 Mr. Finkelstein.

11 (Whereupon, the witness was excused.)

12 MR. CORCORAN: The Government calls Officer
13 Harry Grant.

14 H A R R Y R. G R A N T, having been first duly
15 sworn by the Clerk of the Court, was examined
16 and testified as follows:

17 THE CLERK: Please state your name for the
18 record and please spell it.

19 THE WITNESS: Police Officer -- first name is
20 Harry, H-A-R-R-Y, middle initial R, Grant
21 G-R-A-N-T.

22 DIRECT EXAMINATION

23 BY MR. CORCORAN:

24 Q Officer Grant, are you with the New York City
25 Police Department?

1
2 A Yes, I am.

3 Q How long have you been a police officer?

4 A Eleven years.

5 Q In what precinct are you presently stationed?

6 A 10th Precinct located on 20th Street between
7 7th and 8th Avenue.

8 Q Were you in that precinct in January of this
9 year?

10 A Yes, I was.

11 Q Is West 30th Street, the vicinity of 11th
12 Avenue, within your precinct?

13 A Yes, it is.

14 Q Calling your attention to the month of
15 January 1977, were you, in fact, stationed in the area
16 of West 30th and 11th Street?

17 A 11th Avenue.

18 Q 11th Avenue, I'm sorry.

19 A Yes.

20 Q On January 23rd, were you patrolling that
21 area?

22 A No, I was assigned to guard a fire scene.

23 Q And what fire scene is that?

24 A That was the Raleigh Warehouse which was
25 located -- well 29th and 30th Street from 11th to 12th

Avenue.

Q Is that 662 West 30th?

A Yes.

Q And was that a specific detail during January, that is, guarding that particular warehouse?

A Well, there had been a fire prior, earlier in the month, approximately the 7th of January, and it continued for I guess maybe a month or longer.

Q And were officers assigned to that building to that building to that fire detail 24 hours a day?

A Yes.

Q And for what purpose, Mr. Grant?

A Well, regarding the property that was being removed and also a dangerous condition.

Q You say "property being removed," what do you mean?

A As a result of the fire, the middle of the building was open, and there was a complex of buildings, and there was property stored in the buildings.

Q You say the middle of the building. Are you referring to some of the buildings in the complex were open?

A Yes.

Q Building 662 open?

1
2 A That was the corner building, and to my
3 knowledge I don't recall if it was open or not. I know it
4 was intact by comparison to the rest of the buildings,
5 it wasn't as collapsed.

6 Q Were there intact goods in there that you
7 ere guarding at that time?

8 A Yes.

9 Q To attempt to preven looting, Officer?

10 A Yes.

11 Q Calling your attention to 5:30, 23rd of
12 January, shortly thereafter, did you have occasion to see
13 the Defendant, Kiva Miller?

14 A Are you saying at 5:30?

15 Q Some time thereafter.

16 A Some time thereafter, yes.

17 Q How did you come to see Mr. Miller?

18 A Well, I was assigned to radio car with
19 another officer, Police Officer Barronhouse, and we had
20 a car, and we were circling the block regarding like the
21 fire scene, like I said. We had come around 30th Street
22 and we were on 12th Avenue, and Police Officer -- name
23 of Gilbert Sullivan, who's off duty, approached the car
24 and told us he had seen some people with some property
25 which they had put into a van or removed from a platform

1
2 into the van, and his friend had gone to chase them or
3 something or was following them, and he explained that he
4 identified them, and they had left in the van.

5 Q And did you subsequently find the van he
6 was referring to?

7 A Yes.

8 Q Where did you find it?

9 A Approximately two and a half blocks away,
10 on 28th Street and 10th Avenue.

11 Q And was there anything in the van at the time?

12 A There was some cartons in the van, yes.

13 Q Approximately how many cartons?

14 A I would be guessing if I told you. I
15 would say maybe ten cartons.

16 Q And what kind of cartons were they?

17 A They were large boxes that contained, I guess,
18 assorted toys, and approximately 3' by 3', 3' by 4', I'm
19 not sure.

20 Q What did you do after you discovered the
21 van?

22 A Well, myself -- there was a garage, a taxi
23 garage where the van was parked. I went into the garage
24 and found out if the van had belonged to them. They told
25 me it didn't. I looked in the garage of the taxi place
figuring some of the property had been stored there. I

1
2 then went out and I, with my partner, we canvassed the
3 area a little bit. We went into a building which, I guess,
4 would be the southwest corner, and from there we proceeded
5 up to the roof. I looked on the roof, and a few backyards,
6 and I didn't see any property.

7 Q What did you next see, Mr. Grant?

8 A Well, I had come down -- we come out of the
9 building, and wasn't really sure where the people had
10 driven, the van had gone. We looked around a little, and
11 we didn't see anything. There was a gate that was open,
12 but the door was locked though.

13 Q The door to what, Mr. Grant?

14 A There was a small, I guess, an office or a
15 store.

16 Q Would this be on 28th Street?

17 A Right.

18 Q What did you do at that point?

19 A At that point I went back to the pizza place
20 which was on the corner to try to find out exactly, you
21 know, what had happened to the truck if he had seen anybody
22 leave the truck or anything. At that point I had come out,
23 and while I was conversing with the other officer and also
24 Police Officer Sullivan, I didn't notice it at first, but
25 he said one of the fellows that he had seen at the fire scene

1
2 removing some of the property just started to run down the
3 block.

4 Q Was that on 28th Street?

5 A Yes.

6 Q And did you see that individual run down the
7 block?

8 A Yes, but he was partially down the block. I
9 didn't know exactly where he had come from.

10 Q Was he stopped at the time?

11 A At the time, yes, my partner backed up the
12 car and stopped him.

13 Q Do you see the individual here, who you saw
14 running down 28th Street, here in the courtroom today?

15 A Yes, I do.

16 Q Would you point him out?

17 A I happen to know him now, it's Mr. Miller,
18 because I processed his arrest.

19 Q After stopping Mr. Miller, did you subsequently
20 discover any other cartons, the same quantity, the same
21 type that were located in the van?

22 A Yes, we did.

23 Q Where were those cartons located?

24 A They were located in the office. I don't
25 know the exact address. I'm not sure whether it's 506 or

1
2 502 West 28th Street.

3 Q Did you have any conversations with Mr.
4 Miller with regard to those cartons?

5 A I had asked him where he had gotten them
6 from, and I had asked him where the cartons had come from,
7 and we were trying to actually piece everything together
8 from the information that I had received from Police Officer
9 Sullivan.

10 Q Was Mr. Miller under arrest at that time?

11 A Not at that time.

12 Q What, if anything, did Mr. Miller say about
13 the cartons?

14 A Actually I called the precinct first, and
15 told them that I had been out, you know, with an
16 investigation, and I also called the owner of the property
17 involved, or the warehouse --

18 Q Who was that?

19 A Mr. Pentisino, and as a result there was
20 quite a bit of property involved or, in fact, I think it
21 was 26 cartons to be exact. I proceeded into the precinct
22 with him, and the property or some of the property, and
23 then we had -- in fact, I think Mr. Miller drove the truck
24 for us. He was very cooperative and everything, and we
25 straightened it all out. I told him as a result of this,

1
2 the investigation we had, he was under arrest for criminal
3 possession of stolen property, and grand larceny.

4 Q What were in the cartons?

5 A Like I say, miscellaneous toys and games,
6 doll .

7 Q Would you describe the condition of the
8 cartons in the van you found taken from the premises?

9 A Fairly dry condition.

10 Q Were the goods in any damaged?

11 A Not that I know. I didn't open all the
12 cartons.

13 Q Did you have any conversation with Mr. Miller
14 with regard to his returning those goods?

15 A Yes. He said he would like to, if it was
16 possible, return them.

17 MR. CORCORAN: I have no further questions.

18 CROSS-EXAMINATION

19 BY MR. TERMINI:

20 Q Officer Grant?

21 A Yes.

22 Q You had several conversations with Mr. Miller,
23 is that correct?

24 A Correct.

25 Q And how would you term the conversations?

1
2 Wehre they cooperative, uncooperative?

3 A Very cooperative.

4 Q I believe you made out an arrest report with
5 respect to this case?

6 A Right.

7 Q You were the arresting officer?

8 A Yes.

9 Q And you made that based on what, in effect,
10 the observations of Officer Sullivan were; is that correct?

11 A Yes.

12 Q And do you recall what you stated in the
13 arrest report with respect to the property in question?

14 A I don't know what you're trying to get at.

15 Q Well, you did make a report in the arrest
16 report concerning what was told to you; is that correct?

17 A Yes.

18 Q Do you recall what that was?

19 A Well, I have a memo with me, if I can read
20 it?

21 Q Go ahead.

22 A This is dated June 23rd, 1977, Sunday; arrested
23 and charged at the time, place of occurrence while acting
24 in concert with two others, also arrested. Observed by
25 Police Officer Sullivan, Nassau County Police Department,

1
2 removing property from the warehouse. I'm not sure if it
3 was in front of the warehouse or behind the warehouse, and
4 placed in the van. Arresting officer was informed it was
5 parked in lot, 28th Street and 10th Avenue. Arresting
6 officer went --

7 Q Excuse me. If I show you that report, perhaps
8 that can clarify the recording of that, on the bottom.

9 (Handing to witness.)

10 A Right.

11 Q And what does that say?

12 A Are you talking about the last line, the
13 last sentence?

14 Q With respect to where the property was in
15 the warehouse?

16 A From front of warehouse, right.

17 Q Now, during this time, from the fire until
18 January 23rd was there other looting involved in this area,
19 to your knowledge?

20 A I would imagine there was quite a bit.

21 Q And also from this particular building?

22 A Yes.

23 Q Was it your immediate impression to arrest
24 Mr. Miller on this case?

25 A My impression?

1
2 Q Yes.

3 A My impression, I had to do something, and I
4 wasn't sure what at the time. Usually in a case where an
5 officer, like Police Officer Sullivan -- he was actually
6 witnessing most of -- he claimed, I don't know, removing the
7 property which I didn't see. I, in turn, assisted him,
8 and being from Nassau County I gave him the courtesy of --
9 I would take the arrest, and he could be subpoenaed if he
10 was to continue.

11 Q Is it fair to say that as far as you were
12 concerned, Mr. Miller's offer could have been accepted to
13 return the property with any damages or anything like that?

14 MR. CORCORAN: I object.

15 A Excuse me, I don't know, because I don't know
16 Mr. Finkelstein, that person, to know what he wanted to do
17 with his property.

18 Q What did Mr. Finkelstein say to you?

19 MR. CORCORAN: Objection. Mr. Finkelstein was
20 here.

21 THE COURT: Sustained. I didn't rule on your
22 last objection because you didn't rise.

23 MR. CORCORAN: I maintain my objection, your
24 Honor.

25 Q Basically, is it a correct assumption to

1
2 say that you deferred to the wishes of Officer Sullivan
3 with respect to this case?

4 A Not necessarily. What I said was that
5 Police Officer Sullivan had witnessed part of it. He
6 informed me of it. I was assigned to the fire scene.

7 MR. CORCORAN: Your Honor, I'm going to
8 object to this. Whether or not what the police
9 officers wished to do is irrelevant. The question is
10 what Mr. Miller was doing on January 23rd.

11 THE COURT: I'll sustain the objection.

12 Q Do you have any other personal knowledge
13 what you had concerning the incident at the warehouse?

14 A I don't know what you mean.

15 Q Do you have any other knowledges you haven't
16 testified to concerning what happened at the warehouse?

17 A No. No.

18 MR. TERMINI: I have no further questions.

19 MR. CORCORAN: May I have that?

20 MR. TERMINI: Sure.

21 Excuse me, one other point, Judge. I would
22 submit this as a record held in the normal course
23 of activity as a defense exhibit.

24 MR. CORCORAN: I have no objection.

25 THE CLERK: Defendant's Exhibit A, arrest

report, marked in evidence.

REDIRECT EXAMINATION

BY MR. CORCORAN:

Q Officer Grant, this is your arrest report?

(Handing to witness.)

A Yes, a copy.

Q Would it be fair to say that you made that out some time after the events later that day?

A Yes.

Q Or the next day?

A Yes.

Q Would it be fair to say that the book from which you read was your more contemporaneous notes from which you made out the arrest report -- let me withdraw that.

Was this document made out first or the notes which you read earlier?

A It was made out first.

Q What are those notes?

A Let me explain. When you do make an arrest, this is just to following my book in case I get called to court like this. In fact, most of this was made when I had my case number, my arrest number. All these things. I made this entry late.

1
2 Q And you made this --

3 A Let me explain one thing. When I spoke to
4 Police Officer Gilbert he was fairly excited, and there was
5 a lot of conversation prior to -- I think the actual arrest
6 time was 1730, and the actual offense time was 1630, which
7 was an hour difference, and there was a lot transposed
8 between Mr. Miller, myself, Officer Gilbert, and like I
9 say, I also had the conversation regarding Mr. Finkelstein,
10 my superiors. There was a lot that took place.

11 Q Officer Grant, is it your testimony that
12 Officer Sullivan told you that he had seen those cartons
13 being removed from a platform in front of the warehouse
14 or he saw them being removed from the warehouse?

15 A I couldn't swear to that. I don't really
16 know. I thought he said -- I don't know whether it was
17 in front of front of. I even clarified that before.

18 Q You don't know yourself whether the cartons
19 were removed from in front or from the warehouse, itself?

20 A No, I don't know what Police Officer Sullivan
21 told me exactly. I don't recall.

22 MR. CORCORAN: I have no further questions.

23 THE COURT: Did you pass by the front of the
24 building from earlier that afternoon?

25 THE WITNESS: No. Let me explain. It was very

1
2 cold , it was approximately two or three degrees, and the
3 ice formation from the fire was some places five or six
4 feet thick in the street, and you couldn't drive completely
5 around the building, and there were large potholes, where
6 the water melted.

7 THE COURT: All right, you may step down.

8 (Whereupon, the witness was excused.)

9 MR. CORCORAN: I have no further witnesses at
10 this time.

11 MR. TERMINI: We'll rest, Judge.

12 THE COURT: All right. Do you wish to proceed?

13 MR. TERMINI: Yes.

14 THE COURT: I think I went through a semi-Rule
15 11 proceeding the last time he was here before you
16 started your statement -- am I correct -- with respect
17 to his, is it the violations? Did I go through a
18 semi-Rule 11 proceeding?

19 MR. TERMINI: Excuse me?

20 THE COURT: Did I ask him the appropriate
21 questions?

22 MR. TERMINI: Yes. It's been on a couple of
23 times.

24 THE COURT: I understand that, but did I ask
25 him probative questions and did he plead guilty to the

1 violations?

52

2 MR. CORCORAN: I don't believe so.

3 MR. TERMINI: No, he never pled guilty. That
4 was withdrawn after much discussion.

5 THE COURT: Come up here, Mr. Miller.

6 (Whereupon, the Defendant stepped forward.)

7 THE COURT: There are two violations; one,
8 violation of your probation, and that is the condition
9 number one, you shall refrain from any violation of
10 any law, Federal, State and local; you shall get in
11 touch immediately with your probation officer if
12 arrested or questioned by a law enforcement officer.

13 Now, we've had a hearing on a portion of that
14 violation, and before accepting a plea of guilty to
15 the entire condition, I assume you understand, since
16 we had a hearing on a portion of it, you understand
17 you have a constitutional right to a speedy and
18 public hearing on the entire violation with the
19 assistance of counsel?

20 THE DEFENDANT: Yes.

21 THE COURT: And you have the right to confront
22 and cross examine any witnesses against you as you
23 were with respect to the portion we heard?

24 THE DEFENDANT: Yes.

25 THE COURT: And you have the right to

1 compulsory process to bring in witnesses in your
2 behalf?

3 THE DEFENDANT: Yes.

4 THE COURT: You have the right not to
5 incriminate yourself, not to be compelled to testify
6 at the violation hearing?

7 TH DEFENDANT: Yes.

8 THE COURT: You have the right to persist in
9 your plea of not guilty to the violation charged?

10 THE DEFENDANT: I understand.

11 THE COURT: In which case the Government would
12 be required to prove your guilt by a preponderance
13 of the evidence --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: (Continuing) in the hearing of
16 this kind, and in the event the Government failed
17 to do so, I would have the obligation of finding no
18 violation.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand that I may
21 ask you questions about this violation to which your
22 counsel has offered a plea, and if I put you under
23 oath and you gave me false answers, the answers can
24 be used against you in a prosecution for perjury?

25 THE DEFENDANT: Yes.

1 THE COURT: If I don't put you under oath and
2 you give a false answer, the answer may be used in
3 a prosecution for making a false statement?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand if your plea
6 of guilty is accepted, there will be no further
7 hearing, so you will be waiving the right to a
8 further hearing and all the foregoing constitutional
9 right?

10 THE DEFENDANT: I understand, sir.

11 THE COURT: Now, the charges that you were
12 arrested for; grand larceny, burglary and criminal
13 possession of stolen property, and that this
14 constituted a violation of law. I don't know whether
15 there's a second half of that charge. Did you advise
16 Probation immediately?

17 THE PROBATION OFFICER: Yes, your Honor, he
18 contacted me immediately.

19 THE COURT: So it's only the first part of the
20 probation condition as to which there's a charge.
21 The question is, did you violate in respect a charge?
22 Did you violate that condition of probation?

23 THE DEFENDANT: I was arrested, your Honor.

24 THE COURT: My question is, did you violate
25 any Federal, State or local law?

1 THE DEFENDANT: Yes. I'm sorry, but I
2 didn't know how to answer that exactly.

3 THE COURT: All right. Well, I've heard the
4 role that you've played because of the hearing.

5 Have any promises or suggestions, including
6 any promise or suggestion as to what sentence will
7 be imposed been made to you by your lawyer, this
8 Court or anyone else to induce a plea of guilty?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Have you been threatened or
11 coerced in any way into pleading guilty?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Do you know what the maximum
14 sentence may be imposed for this offense is, given
15 this violation?

16 THE DEFENDANT: No, your Honor, I don't.

17 THE COURT: Well, I originally sentenced you
18 in November of 1975 under 18 U.S.C. Section 3651
19 for a period of five years to serve three months,
20 which means that I can sentence you for the balance
21 of that term, four years, and nine months because
22 of this violation; do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Has your lawyer made any prediction
25 or expressed anything as to what sentence will be

1 imposed?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Have you discussed your plea of
4 guilty fully with your lawyer?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand you will have
7 his assistance prior to the time I impose sentence?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How old are you?

10 THE DEFENDANT: Excuse me?

11 THE COURT: How old are you?

12 THE DEFENDANT: 30, sir.

13 THE COURT: Having been advised as to your
14 Constitutional rights, the nature of the charge
15 against you and the consequences of your plea to
16 this violation, how do you plead to the violation
17 of probation; guilty or not guilty?

18 THE DEFENDANT: Guilty, your Honor.

19 THE COURT: The Court finds that there's
20 a factual basis for the plea and accepts the plea
21 of guilty to the violation. All right, Mr. Termini,
22 what do you want to say? Anything?

23 MR. TERMINI: Well, Judge, I think you have
24 a background, basically, of the situation. I would
25 like to point out that Mr. Miller has been very

1 cooperative with counsel from the entire time I
2 have been assigned to this matter. I have had
3 contact with friends and the wife of Mr. Miller.
4 I think he realizes that it was just a stupid
5 situation he got himself involved in. I don't
6 think he had intent of harming or hurting anybody.
7 I hope your Honor would consider all the factors
8 in Mr. Miller's case. He has been reporting, your
9 Honor. He has a large fine that he has paid off,
10 at least from the papers I have been given. I
11 would hope your Honor would keep all factors in
12 mind with Mr. Miller.

13 THE COURT: Do you want to say something,
14 Mr. Miller?

15 MR. CORCORAN: No, your Honor.

16 THE COURT: I said Mr. Miller, Mr. Miller.

17 THE DEFENDANT: Your Honor, I told my
18 lawyer, Mr. Termini, a few times that I can't even
19 say how sorry I am that it happened, because I
20 really didn't feel -- I wasn't -- well, I don't want
21 to go into the case, what I did and what I didn't
22 do, but I have a business, I'm trying to maintain
23 it. I'm the only owner, the only -- I'm the
24 president and vice president and secretary/
25 treasurer and I have three employees, and it's on

1 shoestring right, your Honor, and I'm trying my
2 best. I'm paying off my fine. I'm paying my bills,
3 and I'm -- I've never done anything other than the
4 time I've gotten in trouble myself.

5 THE COURT: Well, Mr. Miller, you're one of
6 the few people that I have given the kind of break
7 that I gave for a drug violation; a year and a half.
8 There are very few defendants who walk through this
9 courtroom and who are as deeply involved in drugs
10 as you were who got away with a three month sentence,
11 and believe me, I did it -- maybe I should have made
12 it clearer to you at the time -- I did it with the
13 thought that you didn't belong in this courtroom,
14 and you didn't -- you had more intelligence to get
15 yourself involved in something of this nature, and
16 within a year and a half you were one of the few
17 repeats. I think you may be the only one that has
18 come back to me on a violation of probation since
19 my three years on this bench, and it was -- it's
20 a real shock to me.

21 THE DEFENDANT: Your Honor --

22 THE COURT: Because I'm a pretty good judge
23 of character.

24 THE DEFENDANT: It will never happen again.

25 THE COURT: It's not going to, because I'll tell

1 you, you're going to spend the next 18 months in
2 jail.

3 It is adjudged that the Defendant is hereby
4 committed to the custody of the Attorney General
5 or his representative for imprisonment for a term
6 of 18 months , and the Defendant shall become
7 eligible for parole under 18 U.S.C. Section 4205(b)
8 (2) at such time as the Parole Commission may
9 determine.

10 MR. TERMINI: Would your Honor consider
11 staying it for a week?

12 THE COURT: Yes, I 'll stay it for a week,
13 until July 8th.

14 MR. CORCORAN: Your Honor, with regard to the
15 probation, does that continue after the period of
16 incarceration, or is that completed?

17 THE COURT: If it's permissible, he'll go
18 back on probation for the balance of the time.
19 What has he got? I guess he can't put up any bail
20 for this week. How am I going to insure his
21 appearance? Do you own a house?

22 THE DEFENDANT: No, your Honor, I have just
23 my business.

24 THE COURT: Do you own a truck?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: How many trucks do you have?

2 THE DEFENDANT: Four.

3 THE COURT: Are they mortgaged?

4 THE DEFENDANT: Yes.

5 THE COURT: Well, you and your wife go down
6 and sign a \$10,000.00 personal recognizance bond.
7 I'll let you out for a week, but you've got to
8 explain to her that the Government could levy on
9 everything you've got if you disappear.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Okay.

12 MR. CORCORAN: To surrender next Friday,
13 your Honor?

14 THE COURT: Yes. 10 o'clock next Friday.

15 (Whereupon, these proceeding were
16 concluded.)
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AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

PAUL F. CORCORAN

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 28th day of October 19⁷⁷ he served a copy of the within

APPENDIX FOR THE APPELLEE

by placing the same in a properly postpaid franked envelope addressed to:

MARK L. AMSTERDAM, ESQ., RUBIN, HANLEY & AMSTERDAM, 299 BROADWAY,

NEW YORK, NEW YORK 10007

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

Paul F. Corcoran

Sworn to before me this

28th day of October 19⁷⁷

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501966
Qualified in Kings County
Commission Expires March 30, 19⁷⁹